

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS ORIGINAL JURISDICTION AND ON
APPEAL FROM THE DISTRICT COURTS.

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[A. Loizou, J.]

COMMERCIAL BANK OF THE NEAR EAST LIMITED,
Plaintiffs,

and

THE SHIP "PEGASOS III" NOW LYING AT LIMASSOL
PORT,
Defendant.

(Admiralty Action No. 300/77).

*Admiralty—Ship—Appraisal and Sale—Grounds upon which the
Court will order sale for a sum less than the appraised value.*

5 *Admiralty—Practice—Arrest of property—Second or subsequent
action against property already under arrest—When a second or
subsequent warrant of arrest need be taken out.*

10 Following an application by the plaintiffs in the action the
Court made an order for the appraisal and sale of the defendant
ship. The ship was then appraised at the sum of C£180,000.
On the 15th December, 1977 a public auction took place at the
office of the Marshal of this Court and the alleged highest
bidder was for the sum of C£181,000. The Marshal by
his letter dated the 16th December, 1977 informed the Court
that there arose a dispute as to the binding, in law, nature of

this bid, and he sought legal advice from the office of the Attorney-General on the matter. Subsequently the Marshal decided to hold a second auction, and sought directions as to which should be the reserved price since it appeared improbable to have an offer at the height of C£180,000 at which the ship was appraised. Thereupon the Court directed that the auction should in the first instance, commence, as it is usually done when an appraised value exists. If, however, that value could not be reached, then the Marshal might proceed to an auction, irrespective of the appraised value, making it clear that he would not sell or complete the auction by knocking the res to the highest bidder, but that he would be applying to the Court for approval to sell the res at less than the appraised value. 5 10

The second auction was carried out on the 4th January, 1978 and the highest bid was C£103,000. 15

The Marshal's application for approval of the sale at less than the appraised value was served on all persons who have shown interest in the res, having been parties to proceedings against it.

Held, allowing the application, (1) the grounds upon which a court will order that the res be sold for a lesser sum are that "no offers have been received within the time limited for the sale to take place by the Marshal's terms of sale or that only an offer or offers to buy at less than the appraised value have been received within that time or where, for example, there has been a sudden drop in values since the appraisalment so that no offers to buy or no offers at or above the appraised value are likely to be forthcoming" (See British Shipping Laws, Admiralty Practice, Vol. 1, para. 386). 20 25

(2) Bearing in mind all the facts and circumstances and being apprehensive of the risks that a further delay might entail to the ship and also having come to the conclusion that there is no likelihood of having offers at or above the appraised value or even the same price as the one sought to be approved by the order of this Court in the future, in view of the great fluctuation in the value of ships on account of unstable freight market and that further delay will only increase the cost of maintaining the ship and also add to its deterioration, I am left with no alternative but to approve the sale of the defendant ship to the 30 35

last bidder at the highest offer of C£103,000 and I do hereby make an order for its sale at that amount.

(*Editor's note:* The Court in dealing with the facts that led to the Marshal's above application referred to the issue of a second warrant of arrest of the defendant ship at the instance of the plaintiffs in this action, the first one having been issued in another action; and held (*vide p. 5 post*) that the res must be arrested for the second or subsequent time only if the second or subsequent plaintiff wishes to proceed to judgment before the first plaintiff is ready to do so).

Application granted.

Application.

Application by the Marshal of the Admiralty Court of Cyprus for leave to sell the defendant ship for a sum less than the appraised value.

PRESENT:

Marshal of the Admiralty Court of Cyprus.

Mr. Limberopoulos for the owners.

Mr. C. Erotocritou with *Mr. J. Erotocritou*.

Mrs. Ioannou for Mr. Chr. Demetriades.

Mr. St. G. McBride.

Mr. M. Vassiliou.

Mr. A. Hadjoannou.

Mr. P. Sarris.

Mr. St. McBride for Mr. A. Neocleous.

Mr. C. Velaris.

Mr. L. Clerides for Mr. Takis Photiades.

A. LOIZOU, J. gave the following ruling. This is an ex-parte application by the Marshal of the Court seeking directions for the approval of the sale of the defendant ship "PEGASOS III" for a sum less than the appraised value which was at C£180,000.—namely, for the sum of C£103,000.—being the highest bid made at the public auction which took place on the 4th January, 1978.

The facts of the case and the sequence of steps taken therein that necessitated the present application, are these:

The plaintiffs as mortgagees under a first preferred mortgage on the defendant ship dated 18th February, 1977, instituted the present action claiming:—

- “(a) The Cyprus Pound equivalent of U.S. dollars 159,131.66 being the amount of principal outstanding undet the said mortgage and guarantee.
- (b) The Cyprus Pound equivalent of U.S. dollars being interest due on the said sum under the mortgage and guarantee as at 25th August, 1977. 5
- (c) Interest on the sum of U.S. dollars 159,131.66 as agreed and secured by the said mortgage, as from 25th August, 1977 until payment.
- (d) The Cyprus Pound equivalent of U.S. dollars 35,791.85 being insurance premiums paid and or guaranteed by the plaintiffs. 10
- (e) Interest on the amount referred to in (d) above as agreed and secured by the mortgage on the sum of U.S. dollars 18,729.35 from 13.7.77 and on the sum of U.S. dollars 17,062.50 from 13.10.77 until payment. 15
- (f) All costs, expenses and disbursements incurred or to be incurred by the plaintiff for in or about the protection maintenance or enforcement of their security created by the said mortgage and/guarantee or any of them. 20
- (g) Any other amount due and payable or to become due and payable to the plaintiffs by the owners of the defendant ship under the terms of the said mortgage and guarantee or any of them.” 25

Before, however, judgment was eventually, entered, an ex-parte application was filed for—(a) an order of the Court for appraisalment and sale of the defendant ship by public auction or private treaty, and (b) an order and or declaration of the Court vesting in the Marshal the right to transfer the defendant ship or all the shares therein, in the same manner and to the same effect as if the Marshal were the registered owner thereof. 30

The application was based on rules 74–77, both inclusive, and rule 237 of the Cyprus Admiralty Jurisdiction Order 1893. On the same day another ex-parte application was filed by the plaintiffs applying for leave to issue a warrant for the arrest of the defendant ship based on rules 50, 51, 52, 203, 205, 206 and 35

237 of the Cyprus Admiralty Jurisdiction Order 1893 and the General Practice and inherent jurisdiction of the Court.

The defendant ship was at the time under arrest by an order of this Court issued in another action, namely, Admiralty Action
5 No. 203/77 instituted before the present action, but as the plaintiffs in that action were not ready to proceed to judgment, and as the plaintiffs-applicants in these proceedings were ready to proceed to judgment before the other plaintiffs, it was felt necessary, and rightly so, to take out a second warrant of arrest.
10 Indeed, where a second or subsequent action against property already under the arrest of the Court is to be instituted, a second or subsequent writ in rem must be taken out, but a second warrant of arrest need not be taken and the res must actually be arrested for the second or subsequent time, only, if the second or sub-
15 sequent plaintiff wishes to proceed to judgment before the first plaintiff is ready to do so. Otherwise all that it is necessary for preventing property from being released is to enter a caveat against release and payment under Order 65 of the Cyprus Admiralty Jurisdiction Order. (See British Shipping Laws,
20 Admiralty Practice, Vol. 1, 1964, para. 278, and at para. 382 where with regard to appraisalment and sale it is stated:

“ The res must be under arrest in the action in which the order for appraisalment and sale is asked for and if necessary may be arrested a second time for this purpose. The costs
25 of this second arrest would be allowed on taxation.” (As in *The Oakley* (1949 Fo. 451); *The Gerdmor* (1950 Fo. 157); *The Meserret* (1958 Fo. 60); *The Pacific Challenger* (1959 Fo. 234)).

In accordance with the principles hereinabove set out, this
30 Court issued the warrant of arrest prayed for and eventually the defendant ship was actually arrested for the second time. Thereafter, judgment was entered, by consent of the parties, as per sub-*paras* (a), (b), (c), (d) and (e) of para. 12 of the Petition, and costs.

35 The Court then entertained the *ex-parte* application praying for an order for appraisalment and sale of the res and granted same on the following terms:-

“ (a) That the ship “ PEGASOS III ” which is under arrest in the port of Limassol be appraised and sold. The

Marshal himself or anyone or more experienced person or persons he may choose to appraise the said ship according to the true value thereof and immediately after carrying out such appraisal, furnish forthwith to the Registrar of this Court a statement in writing showing the value of the appraised ship and also the amount of the fees, costs and charges and expenses incurred. 5

- (b) The ship in question to be sold by the Marshal by public auction or private treaty for the highest price that can be obtained for it but for not less than the appraised value unless the court, on the application of the Marshal, allows it to be sold for a lesser amount; and 10
- (c) Immediately upon completion of the sale the gross proceeds thereof should be paid into Court and a statement signed by the Marshal showing the amount so paid, as well as all fees, costs, charges or expenses incurred in carrying out the sale, should be furnished to the Registrar of this Court. Such statements should be accompanied by any vouchers necessary to show the amount of the monies expended." 15 20 30

By virtue of the commission of appraisal of the defendant ship, Mr. Renos Sevastopoulos and Mr. Akis Artemis, both pilots in the Government Service and experienced at that persons, having been sworn to appraise the said ship according to the true value thereof, they did certify that "by virtue of our oath, have faithfully and justifiably appraised the said vessel 'PEGASOS III' at the sum of C£180,000 (One Hundred and Eighty Thousand Cyprus Pounds)." 25 30

On the 15th December, 1977 a public auction took place at the office of the Marshal of this Court at Limassol and the alleged highest bidder was for the sum of C£181,000. The Marshal by his letter dated the 16th December, 1977, informed this Court that there arose a dispute as to the binding, in law, nature of this bid, and, for the purpose, he sought legal advice from the office of the Attorney-General of the Republic and sought instructions from this Court on the matter. The Court directed the Marshal to continue being advised by the Office of 35

the Attorney-General as that was a matter that might result in litigation possibly involving also the Government.

5 I was cautious then to express any opinion on the dispute and more cautious now to say anything on this issue, and I am sure that nothing said herein will be taken as expressing an opinion or as commenting thereon, as the matter has, since then, become *sub judice* by the institution of proceedings on behalf of the highest bidder.

10 The Marshal after communicating with the highest bidder to which, I need not refer in detail, decided to hold a second auction and sought directions on two points: (a) Which should be the reserved price since it appeared improbable to have an offer at the height of C£ 180,000 at which the ship was appraised, and (b) those who show interest left it to be understood that
15 they are prepared to buy it at the price of scrap iron, their ideas ranging between U.S. dollars 150,000 to U.S. dollars 220,000.

This Court directed that the auction should, in the first instance, commence, as it is usually done when an appraised
20 value exists. If, however, that value could not be reached, then the Marshal might proceed to an auction, irrespective of the appraised value, making it clear that he would not sell or complete the auction by knocking the res to the highest bidder, but that he would be applying to the Court for approval to sell
25 the res at less than the appraised value. In such a case, notice of the Marshal's application should be given to the various parties and the Court would then inquire as to the reasons why the res had to be sold at a lesser price than the appraised value.

30 The second auction was carried out on the 4th January, 1978 and the highest bidder was a certain Faruk Soutan with a bid of C£ 103,000. This offer was subject to the approval of the Court which was sought by the Marshal's application of the 13th January, 1978, supported by an affidavit sworn by him
35 setting out therein, in brief, the relevant facts.

Notice of the said application was given to eleven persons, who, from the record of the Court, have shown interest in the res, having been parties to proceedings against it. The purpose of this notice was to afford to all or any of them, an opportunity

to express any views that might assist the Court come to a decision on the matter. The statements made on behalf of them, may be grouped into three approaches. The one on behalf of the owning company, is to the effect that the actual value of the ship is in the region of the appraised value and that the bid of C£ 103,000 was a very low one but they could offer no security for any damage that might result by the non-approval of the sale and upon new efforts made that price was not reached. They further reserved all their rights against any person or persons in law liable for the difference in price between the one secured at the first auction and the one in which the approval of the Court was sought.

The second group included the various creditors who had no objection to the approval of the sale at the highest bid offered at the second auction which appeared to them to be the highest that could be secured in the circumstances, again all reserving their rights in respect of the damage suffered from the difference in the prices between the highest bids at the two auctions held.

On behalf of Mr. Takis Photiades, the alleged highest bidder at the first auction, Mr. L. Clerides made a statement in Court, setting out the allegations of his client and informed me that proceedings had already been instituted for a declaration that the auction of the 15th December, 1977 was *null and void*; he also reserved the rights of his client in the matter.

The Marshal of the Court stated that every effort had been made to secure the highest bid—the relevant minutes of the auction have already been filed with the Court—that there is a great fluctuation in the value of ships on account of the prevailing freight market and further that there were serious risks entailed in keeping the ship at its present anchorage and in its present condition for any longer period and that serious problems will arise as to upon whom the risk of loss or damage to the ship falls, in case she perishes or anything else happens to her.

No doubt, appraisalment is made part of an order for appraisalment and sale in order to prevent the sale of a res at too low a price. When an appraisalment has been ordered, the Marshal has no power to sell the vessel at a lesser price than that at which the res has been appraised unless the Court, on his application, allows it to be sold for less.

The grounds upon which a Court will order that the res be sold for a lesser sum are that "no offers have been received within the time limited for the sale to take place by the marshal's terms of sale or that only an offer or offers to buy at less than
5 the appraised value have been received within that time or where, for example, there has been a sudden drop in values since the appraisal so that no offers to buy or no offers at or above the appraised value are likely to be forthcoming." (See British Shipping Laws (*supra*), para. 386).

10 In the present case bearing in mind all the facts and circumstances and being apprehensive of the risks that a further delay might entail to the ship and also having come to the conclusion that there is no likelihood of having offers at or above the
15 appraised value or even the same price as the one sought to be approved by the order of this Court in the future, in view of the great fluctuation in the value of ships on account of unstable freight market and that further delay will only increase the cost of maintaining the ship and also add to its deterioration,
20 I am left with no alternative but to approve the sale of the defendant ship to the last bidder at the highest offer of C£ 103,000.- and I do hereby make an order for its sale at that amount.

In the circumstances, however, I make no order as to the costs of this application.

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*Application granted.**No order as to costs.*